No. 363.

Reply Br. of Worthington for Appellant

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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 363.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, APPELLANT,

vs.

J. FORREST MANNING ET AL., APPELLEES.

REPLY OF APPELLANT TO REASONS GIVEN BY APPELLEES FOR ADVANCING THE CASE.

A. S. WORTHINGTON,
Solicitor for Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

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THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, APPELLANT,

vs.

J. FORREST MANNING ET AL., APPELLEES.

Reply of the Appellant to the Reasons Given by the Appellees in Support of Their Motion to Advance the Case for Argument During the Present Term.

1. The unsupported statement of counsel is that the community is harassed with doubts arising from two opposing decisions on a question of the greatest importance to its business interests, and that because of this case great confusion and friction exists in the business of the whole community, which has been going on for three years and a half. As a matter of fact the fifty suits to which counsel refer as pending in the supreme court of the District of Columbia, involving the same questions raised in this case, represent fifty subscribers out of about sixty-six hundred, and the great body of the subscribers are making and have made no controversy, and are, so far as the appellant can judge,

satisfied that the rate they pay is only a reasonable consideration for the service which they receive. The excitement in the community exists only in the imagination of counsel.

2. The opinion of Mr. Justice Barnard, who decided the case in the supreme court of the District in favor of the appellant, and the opinion of the Court of Appeals, which reversed the decree of the supreme court of the District, are not conflicting, except as to the result. Mr. Justice Barnard, after listening to the evidence and arguments in the case for about two weeks, and considering the evidence for several weeks longer, reached the conclusion that the appellant could not furnish telephone service at the rates fixed by the act of Congress of June 30, 1898, without a loss. A majority of the Court of Appeals held that the appellant is bound to furnish the service at the rates fixed by the statute, without regard to whether it can do so at a profit; that it must perform the service at the rates fixed by the act or go out of business, thereby practically losing the value of its entire plant in the District of Columbia, which the evidence in this case shows is worth at least four hundred and fifty thousand dollars. On the subject of the reasonableness of the rates fixed by the act in question, a majority of the Court of Appeals reached this conclusion:

"As the judgment appealed from must be reversed upon "the ground first stated, regardless of the fact that the "statutory rate might be most unjust, we have not made up "a particular statement of all the many items entering into "that consideration.

"If the case turned upon this point we would have great "difficulty in determining from the mass of figures and "opinions in evidence what particular rate would cover "legitimate expenses and afford any return for the money "invested, and would feel a strong inclination to remand "the cause for the introduction of additional evidence upon "some of the points of difficulty that have been suggested,

"and with direction for reference to the auditor to find and "report all of the necessary facts with all necessary or im- "portant computations and estimates.

"The most that we now feel called upon to say is that our "examination of the evidence does not satisfy us that the "necessary effect of the enforcement of the rate will be de- "structive of defendant's rights of property" (29 Wash. Law R., 348).

Mr. Chief Justice Alvey concurred in the result, but on what ground is not stated.

3. The further unsupported statement of counsel is that the appellant since the act in question was passed has collected each year more than one hundred thousand dollars in excess of the charges fixed by the statute, aggregating at this time fully three hundred and fifty thousand dollars. The appellant asserts that this statement is a gross exaggeration.

4. While it is true that if the case waits its regular call on the calendar the present session of Congress will have come to an end before it is reached, it is possible that during the session Congress may enact such laws relating to telephone service in the District as will be satisfactory to the appellant and to the appellees and which may even render it unnecessary for this court to consider the case at all.

As to the intimation of counsel in their "reasons for the motion," that many persons are prevented from availing themselves of the use of the telephone who would become subscribers if the statutory rates were decided to be binding on the appellant, the attention of the court is respectfully invited to the fact that under existing laws the power of the appellant to put down underground conduits or to extend overhead wires in the city limits is so restricted that it would be impossible to materially increase the number of

subscribers in the principal parts of the city. In this connection the appellant submits the following extract from the annual report of the Commissioners of the District of Columbia, which has just been transmitted to Congress:

"Attention is invited to the fact that the Chesapeake and "Potomac Telephone Company is prevented from building "conduits either to bury its existing wires or to make ex- "tensions to its existing underground system, while the "electric lighting companies enjoy unlimited privileges in "this direction. The telephone company is ready and "willing to take down a great many of its overhead lines, "which it cannot do, however, without the building of ad- "ditional conduits. A carefully drawn bill (H. R. 9053), "having many features which it would be desirable to have "enacted, was introduced in the last Congress, which would "relieve this restricted condition of affairs."

This court has held that a case will not be advanced simply because it is a case of "great public importance" (Carter *vs.* Greenhow, 109 U. S., 64). But no public interest is involved in this case except as in any other case involving important questions of law. Neither the Government of the United States nor the District of Columbia has taken any part in this litigation. The case, therefore, is one which under rule 26 will not be "taken up out of the order on the docket" (U. S. *vs.* Forrest, 21 How., 445; Sage *vs.* The Central Railroad Company of Iowa, 93 U. S., 412; B. & O. R. R. Co. *vs.* Marshall County Supervisors. 131 U. S., Appendix XCIX).

Finally, the appellant reminds the court that in September last Jeremiah M. Wilson, Esq., who was its principal counsel in this case from the beginning, and who was also its president, died. No successor has been appointed or selected in his place, either as president or as counsel. Counsel who were associated with Judge Wilson have

informed the appellant that the case requires that counsel shall be employed in his place. The transcript in this case will make a printed record of nearly thirteen hundred pages, and preparation for the argument will involve an immense amount of labor, and will occupy a great deal of time on the part of counsel who shall take the place of Judge Wilson. If the court should decide to grant the motion, it is for this reason asked that ample time be given for the examination of the case by new counsel and the preparation of a proper brief.

A. S. WORTHINGTON,
Solicitor for Appellant.